

LAÏCITÉ ON THE EDGE IN FRANCE: BETWEEN THE THEORY OF CHURCH-STATE SEPARATION AND THE PRAXIS OF STATE-CHURCH CONFUSION

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Secularism, or laïcité, has been enshrined in French law and political praxis since 1905. However, it should not be assumed that in the French context secularism and Church-State separation are synonymous: because the Conseil d'État determines which entities are to have the legal status of religious associations, interference in religion by public authorities is the norm rather than the exception. In taking upon itself the role of neutral arbiter in relation to religious practices and institutions, the French State has made itself a permanent presence in religious affairs in the same way that a referee is an essential element of sporting matches. This article explores this highly singular mode of political interference in the religious field. To lay bare the mechanism of the French 'laïcité machine', the controversy over the wearing of the Islamic headscarf, and the legislative response which it precipitated, are discussed in detail.

Reference to *laïcité* has been steeply on the rise in public discourse over the last twenty years in France, to the point of directly or indirectly becoming part and parcel of media-speak on a daily basis in newspapers, on radio and television. During this period it has become self-evident that state-monitored secularism is no longer the bone of contention it once was, violently splitting opinion along 'for or against' fault lines, but has progressively morphed into a socio-cognitive frame of reference, a sort of screen wallpaper for France's social panorama, endorsed as such by all social groups, even when the latter may be at loggerheads on other issues. The same phenomenon arose concerning the notion of democracy, which, in the 19th century, was the object of overt antagonism between its left-wing champions and its violent opponents on the right, nostalgic for a return to the *Ancien Régime*. During the 20th century however, it progressively turned into a socio-cognitive

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frame, an unquestioned and unquestionable mindset, challenged by none, and so non-reflexive, self-evident. *Laïcité* has largely followed this mould, albeit in this case the phenomenon of cognitive consensus locked in at a much later date, early on in the 1980s.¹

I THE MYTH OF THE 1905 ACT OF PARLIAMENT

The *Separation of Churches and State Act 1905*² (1905 Act) proclaimed for the first time in French history the principle of separation between churches and the State, and has become the main legal basis for *laïcité* (even though the word ‘*laïcité*’ did not appear in the Act, because this word did not have the sense of separation between religions and the public sphere at the time).

The renowned 1905 Act itself, enshrined as a founding myth, in fact only formally evokes such a separation in its title, and indeed, among its contents, certain measures concretely clash with the very separation placarded in the title. If one goes deeper, it soon becomes obvious that the history of *laïcité* by no means took its cue from a movement towards separation, but was imbued from the start with a particular administrative mindset, one of control and public valorisation/devalorisation of religious phenomena and groups. If one adopts a comparative point of view, one cannot fail to be dumbfounded, for instance, by the fact that France happens in fact to be one of the European states which interferes the most frequently in religious matters, one of the countries where there are the most ‘special statuses’ for associations only obtainable if one succeeds in being officially endorsed as a group that has religious activities.³

The Conseil d’État (State Council) is thus in charge of determining who and what is eligible for the status of an association for religious activities (‘*association cultuelle*’) and who and what is not, facing clamours by associations for such a materially or symbolically advantageous ‘special status’. Does all this mean that *laïcité* is in fact nonexistent? Certainly not, *laïcité* does indeed exist, manifest for all precisely under the guise of just such a structural hypocrisy: this inversion-involution between the theory of a practise and the practise of a theory – an inversion-involution never debated or thought through, though remaining a caricature in its modes of application and social fallout.

Stricto sensu, *laïcité* means a clear acknowledgement of the lack of competence in the religious domain by the public authorities, exactly as a civil court declares itself

¹ Raphaël Liogier, *Une laïcité légitime. La France et ses religions d’Etat* (2006).

² *Loi du 9 décembre 1905 concernant la séparation des Églises et de l’État*.

³ In French, ‘*association cultuelle*’. ‘*Cultuelle*’ means here the practical part of a religion (its rituals in particular) independently from its dogmatic system, which is not supposed to be taken into consideration by the Conseil d’État to grant this status. ‘*Culte*’ refers to the ensemble of religious practices of a specific religion and not to the subordinated, devaluated kind of religious groups that are named ‘*cults*’ in English (the French word for ‘*cult*’ being ‘*secte*’).

not competent under penal law. Interference in religion by the public authorities is however, not the exception but, on the contrary, the normal state of what is, and has ever been, labelled *laïcité* in France. ‘Incompetence’ has forthwith to be interpreted as meaning ‘neutrality’. The ‘neutrality’ concept, exclusive and in denial of any positioning or opinion, merely authorises positive interference in the social arena in the same way as a referee, whose main quality is precisely his purported neutrality, intervenes in a football match. It is undeniably because he is said to be neutral that the latter is empowered to interfere. Neutrality thus stands out in contradistinction from separation as an implicit ideology justifying any and all interference in advance. The juridical doctrine has *sui generis* engendered a system of neutrality enabling practical action where all action is theoretically denied.

The public authority elaborates strategies of distinction between different religions, which spill over into logics of action. These logics of action have the singularity of portraying themselves as being the contrary of what they are, that is to say, never appearing to be forms of interference in the religious arena, in order the better to maintain the principle (fiction) of *laïcité*. Here, a point of theory is requisite: in this field the ‘struggle of classifications’, or taxonomy, not only antedates class struggle, as Pierre Bourdieu once wrote, but it is the mainstay and resource of public action. It is indeed through the play on definitions, or binary denunciation on a basis of terminological valorisation or devalorisation,⁴ that the representations that underpin public decision-making on religious issues are construed. According to our hypothesis, from a sociological point of view, *laïcité* is not the separation of the religious from the political, but a highly singular mode of political interference in the religious field, which presupposes the denegation of the ‘religious’ nature of the intervention itself. This denegation may well constitute under certain conditions a resource for public policy-making, and under others a form of constraint.

To provide an example, in France most Buddhist groups have enjoyed a far higher degree of legitimacy and recognition on the part of the powers that be – spinning off into concrete measures, for instance the granting of the advantageous status of ‘religious congregation’ (a religious association with higher status juridical capacity) – than those as yet dealt out to Islam in general (the latter being true not only of France, but also of the majority of European Union countries),⁵ and that in a very short lapse of time (the first French Buddhist associations only emerged in the mid 1970s), taking into account the fact that French Buddhist movements attract between eight and 80 times fewer adherents, according to the method of calculus adopted.⁶ Other abrupt variations in public policy-making towards different

⁴ For instance, by the classification of a movement or association as a ‘cult’ (*secte*) and another as a ‘religion’.

⁵ R Liogier, ‘Deux perceptions différentes de la religion minoritaire en Europe: Islam et Bouddhisme’ in J P Bastian, F Messner (eds), *Minorités religieuses dans l'espace européen: Approches sociologiques et juridiques* (2007) 251-282.

⁶ There are approximately four million Muslims in France - more precisely 4,115,000 according to the nearest estimations (A. Boyer, *L'Islam en France* (1998) 18), whereas there are purportedly between 500,000 and 50,000 Buddhists, according to the method of count adopted, depending on whether one does or does not take into account membership of

minority religious movements are on record today: within the Buddhist constituency itself, a group like the Soka Gakkai can be singled out as a ‘cult’ (‘secte’) by parliamentary white papers, with all the ensuing social and political fallout entailed,⁷ whereas in 1988⁸ another group, Tibetan in orientation, Dhagpo Kagyu Ling, was the first non-Catholic association to be granted the full status of ‘religious congregation’.

It may seem somewhat incongruous or weird to use the expression ‘public recognition of a religious group’ – and still more, to speak of ‘religious public policy’ – when the State itself ought to be cleaving to a posture of pure separation, avowedly not competent in religious matters. This paradox goes back to the process of the secularisation of the State, gradually occurring in France during the 18th century at a time when the term *laïcité* itself was not yet on anyone’s lips, and whose sole function was to provide a framework for the rising tide of tolerance towards individual and group confessional choices, for the simple reason that such tolerance was the necessary, logical consequence of the freedom of thought and expression increasingly coming to be seen as fundamental. Since that time and up till today, the public authorities have never really relinquished the management of religious issues to the private sphere, while officially committing themselves, legislatively from the outset of the 19th century, constitutionally from the beginning of the 20th century, to the clear separation of Church and State. This contradiction has with time issued in a compromise which culminates in a semantic-cum-social-cum-juridical-cum-political slalom away from the notion of juridical incompetence towards that of the neutrality of the State, thus implicitly lending credence to the idea of the latter’s right to interfere, and enshrining its own competence on religious issues, in the name of theoretical neutrality.

The notion of neutrality is an offshoot of juridical doctrine and by no means a raw legal given.⁹ Renowned French legal authorities like Léon Duguit, Jean Carbonnier and Jean Rivero have thus set up, for judges and the authorities alike, so-called ‘neutral’ definitions of both religious phenomena and *laïcité* itself, later to be retooled and refined upon by jurisprudence.¹⁰ The constitutive presuppositions of such ‘neutralities’ underpin and justify juridical regimes that evolve according to

associations and levels of assiduity in different forms of religious practise (B Etienne, R Liogier, *Etre bouddhiste en France aujourd’hui* (1997) 59-62).

⁷ F Frégozi, J P Willaime, *Le religieux dans la Commune. Les régulations locales du pluralisme religieux en France* (2001) and F Champion, M Cohen, *Sectes et démocratie* (1999).

⁸ Or, more exactly, the Dhagpo Kagyu Ling Association (*1901 Act* association), created in 1977, retains the same status, with like logistical functions, while the Karmé Dharma Chakra Congregation now assumes the more properly religious activities, since obtaining this status on January 8, 1988.

⁹ J Rivero, ‘La notion juridique de laïcité’ in *Recueil Dalloz* (1949) 137.

¹⁰ P Mazet, ‘La construction contemporaine de la laïcité par le juge et la doctrine’ in J Baudoin, P Portier, *La laïcité. Une valeur d’aujourd’hui. Contestations et renégociations du modèle français* (2001) 263-283.

political and social power logics.¹¹ The real contents of the aforesaid ‘neutralities’ call for targeted policy-making focusing on the distinction between good and bad religions, i.e. between ‘fundamentalists and terrorists’ and ‘tolerant and peaceful’ religions. Such classifications culminate in a hierarchical rating on which religious movements are distributed up and down a scale of binary criteria of ‘harmful-/harmlessness’, which in fact pan out as: good religion equals statutory, publicly recognised; non-statutory, non-publicly recognised equals bad religion.

II *LAÏCITE AS A STRAITJACKET FOR FREEDOM OF THOUGHT AND SPEECH*

What is today called *laïcité*, i.e. the machinery for the administration of the religious set-up after the fall of the *Ancien Régime*, is for all intents and purposes structurally ‘Gallican’.¹² The absolute monarchy – having weakened the aristocratic class in its function as a counter-power and consequently forced to seek support among the city-dwelling popular classes – was in fact the great facilitator of the French Revolution, a revolution more radical and more monopolistic in France than elsewhere. Gallicanism, both as moral justification and centralised methodology of management, seems to have ever since remained the ‘invisible religion’ of republican *laïcité*. But *laïcité* is no mere methodology of management; on a deeper level it is also the culture socially constructed by a segment of the population in order to legitimise just such a mode of management.

The principle of *cujus regio, ejus religio* was formally abolished by the 1789 French Revolution in the name of the freedom of conscience and speech: the religion of the monarch was no longer to be that of the totality of his citizens, henceforth free to adopt whatever creeds they chose. The principle of freedom of religious conscience and speech is enshrined by the *Declaration of the Rights of Man and the Citizen*, August 26, 1789, (art 10), and further developed by the 1948 *Universal Declaration of Human Rights* (art 18), and also by the 1950 *European Convention for the Protection of Human Rights and Fundamental Freedoms* (art 9-1 and 9-2). However, in the French Declaration, religion is only mentioned incidentally,¹³ negatively, so to speak, while in both the other texts freedom of worship is part and parcel of the freedom of conscience and association.

¹¹ Alain Garay has thus described a ‘political project’ at the origin of juridical issue of different forms of worship in France (A. Garay, ‘Quelles libertés pour les cultes en France ?’ in *Actes du Colloque international: Droits de l’homme et liberté de religion, pratiques en Europe occidentale* (2001)).

¹² J P Willaime, ‘Laïcité et religion en France’ in G Davie, D Hervieu-Léger (eds), *Identités religieuses en Europe* (1996).

¹³ Art 10: ‘Nul ne doit être inquiété pour ses opinions, *même* (emphasis added) religieuses, pourvu que leur manifestation ne trouble pas l’ordre public établi par la Loi’. (‘No one should be disturbed because of his or her opinions, *even* (emphasis added) religious, so far as their expression does not infringe on the public peace established by the law’). The use of the word ‘*même*’ (‘even’) manifests, if not the scorn, at least the deep distrust in which the writers held religious opinion, seemingly the undesirable jet lag of the freedom of conscience.

The French State was to adopt this negative approach: official refusal to publicly recognise any form of worship, while progressively setting up juridical regimes of recognition and developing policy-making to favour some confessions to the detriment of others. On the contrary, the majority of other European countries were applying a positive approach which oscillated around more or less strict lines for the official recognition of religious cult(s).¹⁴ *Laïcité* thus appears here to be most rigorously defined as a highly specific approach, definitely entailing no real eviction of the religious from the sphere of action of public authority, but rather introducing a specific mode of the latter, an underpinning for state religious interventions.

The notion of *laïcité* has been constitutionally validated ever since the Constitution of the Fourth Republic stipulated that ‘France is a “*laïque*” Republic’. The constitutional enshrinement of such a principle is the result of recurrently erupting conflict throughout the 19th century. *Laïcité* was for more than a century the epicentre of a hands-on societal antagonism which successively switched between bouts of radical struggle against religious congregations, more particularly the Roman Catholic, underpinned by a groundswell of combative anti-religious activism, and a tacit validation/collaboration by the State towards its most deeply embedded religious tradition, that of Catholicism itself.

Both republican anti-clericalism and Catholic anti-republicanism were alternatively expressed directly and openly or conversely under the cover of contradictory, cross-footed interpretations of freedom of conscience and religious practice. This recurrent antagonism at times gave birth to flagrant juridical incoherence,¹⁵ for instance, in 1814-1815, through two contradictory provisions of the *Charte*¹⁶: Article 5 states that ‘each and everyone is free to profess his religion with an equal liberty and obtain the same protection for his form of worship’; Article 6, on the other hand, adds that ‘Nevertheless, the Roman Catholic Apostolic Religion remains the religion of the State’.

¹⁴

Jean Baubérot distinguishes four different European approaches to secularisation which do not in fact necessarily imply an exclusion of the religious from the public sphere but rather variable models of relations between the public sphere and the religious field: ethno-religion, civil religion, religious pluralism and last, but not least *laïcité* (J Baubérot, (ed), *Religions et laïcité dans l'Europe des Douze* (1994); for a synthesis of this author's analyses, see 'Les Européens et les prises de position des Eglises' in *Religions et société, Cahiers français* (1995) 273.

¹⁵

J Baubérot, ‘Peur de la religion et laïcité’ in *Laïcité et Religions, Revue des Deux Mondes* (2002) April.

¹⁶

The ‘*Charte*’ is the fundamental text in which is declared the establishment of a constitutional monarchy in France with the successor of the Bourbon dynasty, Louis XVIII, at its head. Written and voted in 1814, the text was concretely implemented in 1815, and was a compromise between the principles of the Revolution and the return of the ancient monarchy.

III THE SLIPPERY SLOPE FROM PUBLIC INCOMPETENCE TO 'NEUTRALISING NEUTRALITY'

The French State has never unequivocally and strictly declared itself incompetent in religious matters, preferring to emphasise its neutrality, assimilated with the 'general interest', a concept requiring no justification as being purportedly *self-evident*. Like every dogma, 'general interest' is unquestionable and unassailible by nature and confers the right to unlimited interference. In the 19th century, the Republic thus invested itself, including in the discourses and declarations of its most moderate harbingers, with 'spiritual authority';¹⁷ a lofty vocation to transmit universal values, hence the vital strategic importance of State schooling as the prime instrument for the application of this ambitious programme. Successively, the anti-clerical groups or the congregationalists would gain the upper hand, winning institutional and symbolic power, in either case they impose their particular representation of the general interest and a specific content of 'neutrality' (which matches with their specific interest!).

The *1905 Act* was the result of extensive debating and a flurry of legislative white papers¹⁸ culminating in the voting of a text. Agreement was never definitively reached, and the issue was indeed to be partly tabled again only two years later: the Catholic Church refused to conform to the regime of 'associations of worship' ('*associations cultuelles*') whose 'exclusive object was the practise of a religion'¹⁹, as provided for by the *SCS Act*, and opted rather to continue within the strict associative framework stipulated by the *Association Act 1901 (1901 Act)*.²⁰ On the one hand the associative framework of the *1905 Act* provides some privileges, for instance about taxes, but on the other hand it implies a restriction to religious activities, which is not the case for the *1901 Act*. The legislator was to be forced to settle this situation by the *Public Practice of Religions Act 1907 (1907 Act)*,²¹ granting the power to 'assure the continuity of the public exercise of worship'

¹⁷ As Marcel Gauchet has highlighted, even so moderate a republican as Renouvier, 'who detests nothing more than the perspective of an "empire of faith" or an "administration of souls", whether under clerical or under positivist guise, is reduced to having recourse to the fatal word. One should not fear, he says, to recognise in the State, in the Republic, "a true spiritual power". This "spiritual power" purportedly provides a legitimate orientation for the "collective moral interests"' (M Gauchet, *La religion dans la démocratie. Parcours de la laïcité* (1998) 48).

¹⁸ P Cabanel, '1905: une loi d'apaisement?' (2004) 289 *L'Histoire* 68-71.

¹⁹ Articles 4 and 19 of the *1905 Act* provide for the setting up of 'associations for worship' ('*associations cultuelles*') as distinct from the type of association provided for by the *1901 Act*.

²⁰ *Loi du 1er juillet 1901 relative au contrat d'association.*

²¹ *Loi du 2 janvier 1907 concernant l'exercice public des cultes.*

within the associative framework of the *1901 Act*.²² This means, clearly, that this power was granted specifically and uniquely to the Catholic Church. It was not, surprisingly, a new legal regime made available for everyone, so that one could choose whether to operate according to the 1905 regime or to the 1901 regime as modified by the *1907 Act*. The ‘*laïque*’ framework was subsequently to continually evolve, for instance in correlation with the capacity of Catholic mediating groups to produce relevant representations and to penetrate decision-making circles, as against the capability of the public authorities to offer resistance to such pressure. This explains why, as from 1924, there are diocesan associations²³ set up in conformity with the 1901 and 1905 Acts, which have since 1987 benefited from a regime of tax exemptions; that to this day the French government retains the right to supervise the process of the appointment of Bishops; that Catholic places of worship predating 1905 are still maintained by the public purse, since they remain public property; or that the vast majority of contractually state-funded private schools are Catholic.²⁴ It must also be recalled that in certain portions of the territory of the theoretically seamlessly indivisible French Republic the *1905 Act* is simply not implemented: the *1801 Concordat*²⁵ has indeed never been rescinded in its principle in Alsace-Mozelle, even if a few modifications have been brought in, and a Catholic mission is still entrusted with public schooling in Wallis and Futuna. Without even going deeper into such patent contradictions, such practical exceptions to the rule, but solely focusing on the *1905 Act*, one is dumbfounded to discover that the expression ‘separation of churches and State’, endlessly in currency right down to today as a synonym of *laïcité*, actually occurs there once and once only, and then merely in the title of the *1905 Act*. This ‘detail’ has its importance when one remembers that at the time titles did not belong to the prescriptive, applicable and enforceable contents of the law. The legislator thus indulged in what might be called some ‘media hype’ thanks to an ideologically resonant title, which does not however translate into a clear juridical reality in the text of the Act itself. In the history of France, *laïcité* thus can be said to represent a system of reference which constantly eludes critical scrutiny.

The dominant groups of the religious field have never been factored out of the decision-making process. This reality, multi-sectoral concerning the Catholic Church, can also be shown to be true in the case of other confessions which have been in a position to make themselves heard through official organs designated for them as representative by the public authorities: the Protestant Federation of France, the Representative Council of French Jewish Organisations, the Orthodox Inter-episcopal Committee of France, and finally, among the most recent arrivals, The Union of Buddhists of France. It is notable that Islam has been the last religion

²² The expression ‘*1907 Act* associations for worship’ (‘associations cultuelles de la loi de 1907’) is usual for associations remaining within the 1901 framework, even when they retain the prime objective of worship.

²³ J P Durand, *Liberté religieuse et régimes des cultes en droit français – Textes, pratique administrative, jurisprudence* (1996) 300.

²⁴ Despite their considerable numbers, Muslims only possess *one*.
²⁵ *Concordat du 26 messidor an IX* (15 juillet 1801).

to obtain a representative organisation (The French Council of Muslim Worship): the ‘excessively radical’ antagonism between the interests of the public authorities and those of Muslim groups long hampered the creation of anything resembling a legitimate institution.

IV THE TREATMENT OF ISLAM AS AN EXEMPLAR OF ‘NEUTRALITY’

The construction of Islam as a social problem requiring a political solution was carried out in several instalments which were dependent both on the domestic and the international situations. In the specific case of France, the historical relationship with the colonisation/decolonisation process has played a major role in the representation of an alien form of religiosity, incompatible – first and foremost incompatible because inferior, subsequently because dangerous – with republican values.²⁶ After the Algerian war of independence, the colonial image of the Muslim-Arab-Maghrebin as belonging to a fundamentally inferior society, whose only hope was to merge with the host society, which had granted him the short-lived boon of a job for wages, was overwhelming. The Muslim is not then considered to be a troublemaker, but rather as a transient presence requiring close surveillance. Society itself is not deemed to be impacted by this passing presence. Islam is not treated as a domestic problem but as a foreign-policy concern,²⁷ or as a mere component of economic policy, in the narrow sense of industrial policy-making.²⁸ It was only progressively that the immigrant population concentrated in the suburbs came to be equated, on the one hand, with a dangerous form of marginality rife with delinquency on the domestic level, and, on the other, as a beachhead of foreign influence on the part of Muslim states.²⁹

Two stubbornly negative images, underpinning a so-called ‘security’ policy in the widest sense of the word, which has given a ‘natural’ vocation to the sectors of the Home Office and the Ministry of Foreign Affairs in the resolution of the Muslim problem, have formed. These two image-frames, whether they do in fact partly echo reality or should mainly be confined to the world of fantasy, as appears to be the case,³⁰ do not directly concern our present discussion. We need do no more than take into account the existence of the two closely linked representations, whose

²⁶ G Kepel, *Les banlieues de l'islam, naissance d'une religion en France* (1987) 424.

²⁷ J Cesari, *Musulmans et républicains. Les jeunes, l'islam et la France* (1998) 166.

²⁸ A Boyer, *L'Islam de France* (1998) 370.

²⁹ On the interactions between Muslim immigration and Muslim States, F Dassetto, *La construction de l'islam européen, approche socio-anthropologique* (1996) 383, is well worth consulting.

The involvement of Saudi Arabia and, more generally, of the World Muslim League, in the funding of several mosques, is undeniable. The World Muslim League, founded in 1962 by Saudi Arabia and under the latter’s leadership, includes, among its ramifications, the Superior Council for Mosques, charged with subsidising the creation or the restoration of mosques and of supervising their activities. The European branch of the Superior Council for Mosques has its headquarters in Brussels under the title of the Intercontinental Council of European Mosques. The chapter devoted to ‘stratégies diplomatiques et politiques islamiques’ (‘diplomatic strategies and Islamic policies’) in F Dassetto, *La construction de l'islam européen, approche socio-anthropologique*, above n 29, is very useful here.

relative weight in the scales of negotiation of a public policy for Islam in France has oscillated from the 1960s up till today, according to situations a priori independent from the ritual and dogmatic basis of this form of religiosity.

The economic crisis which ushered out the '*trentes glorieuses*' (post-war boom years) was characterised by an alarmingly steep hike in unemployment figures, partly correlated with the petroleum crisis of the nineteen seventies, paving the way for serious social upheaval.³¹ Once cognizance is taken of the fact that the main States arraigned as responsible for the 'petroleum crisis' were Muslim countries rallied under the banner of the OPEC so as to 'combat' the 'Occident', we obtain a first explanation for the setting up during the 1970s of an 'Islam policy' coordinated by the Home Office and the Quai d'Orsay (Ministry of Foreign Affairs) on French territory. In this first phase, Islam was only to be contained, while formerly it had been merely ignored, at least as an object of concerted public policy-making. It was by no means either a 'good religion', or even a 'recognised' religion. In its case, of course, none of the registers of institutional recognition were applicable. Maghrebins present on French territory were 'in transit'; they were by no means to be considered as permanent residents.³² Islam itself was not considered yet as an essential problem, but only as a barely visible temporary reality.

The second phase, beginning in the mid-1980s, corresponds to an aggravation of the representation of the harmfulness of Islam, peaking in the 1990s with the resurgence of terrorist attacks in Algeria and in France, claimed by Muslim groups such as the Islamic Salvation Front (FIS, 'Front Islamique de Salut').³³

It was to be a period of mounting awareness of the 'sedentarisation' of immigrant populations, coinciding with the economic downturn which had put paid to the '*trentes glorieuses*'. The growing visibility of the 'sedentarised' populations with offspring born on French territory, hence of French nationality, boosted the phenomenon of a xenophobic backlash targeting Arabs/Maghrebins/Muslims. This aggravation of fantasy-fuelled negativity did not immediately trigger a heightened policy of repression, but rather set in motion an evolution in strategy. What was at stake was to find the means to 'naturalise' Islam, by selecting 'legitimate' spokespeople, while circumventing foreign sources of funding, not through direct repression, but by public regulation of the establishment of places of worship, and seeking temporary solutions for ritual slaughter³⁴ and the organisation of largely scattered groups.

³¹ G Kepel, above n 26.

³² Claims however emerged in the environment of workers' hostels ('sonacotra' or private hostels) and in industrial contexts (mainly car manufacturers). Muslim workers were then primarily claiming for provision of prayer rooms and *halal* meals.

³³ G Kepel, above n 26.

³⁴ Ritual slaughter has fired a public health issue during the Id al-Adha. Normally, the sacrifice should be accomplished by the head of each family unit, but French Muslims generally prefer to have recourse to a professional sacrificer. In France, there is no approved Muslim religious organism with the faculty to appoint sacrificers, comparable to the Jewish Consistoire Général in the case of *kosher* food. Until the setting up of such a representative

Since the 1990s, the naturalisation strategy has culminated in a systematic quest for handpicked interlocutors, as representatives for legitimate organisations. The officially recognised target has been the setting up of a single umbrella organisation to represent all the 'Islams of France'.³⁵ By 1980, the Raymond Barre government had already established by decree a 'Consultative Commission for French Muslims' ('Commission Consultative des Français Musulmans'), in charge of channelling proposals to upgrade the living conditions of the latter, with the aim of facilitating their integration, while allowing for the respect of their religious rules. The Mosque of Paris was then the government's prime interlocutor, until it fell under the control of Algeria, following the election of Shaykh Abbas to the post of Rector. Public authorities subsequently dropped the connection in protest against Algeria's stranglehold. Later, in 1990, Pierre Joxe, the then Minister of the Interior created the Council of Reflection on French Islam (CORIF – 'Conseil de Réflexion sur l'Islam de France'), a think-tank devoid of any representative aspirations. This was to be a short-lived measure, pending the advent of democratically elected Muslim representatives. The setting up of a representative organ, however, proved arduous as, since 1981, with the possibility for foreigners to create associations without prior authorisation from the Minister of the Interior, Muslim associations with a worship-oriented, cultural, educative etc vocation, have multiplied.³⁶ Such associations or organisations do not all rely on the same understanding of Islam. The public authorities may have hoped to witness the advent of a 'French Islam', but in reality find themselves dealing with a multiplicity of Islams.³⁷ The failure of the most recent attempt at organising an electoral process with a view to setting up a representative organ is consequently symptomatic. The 'uniform naturalisation' of Islam is not about to happen, even if former Minister of the Interior Nicolas Sarkozy succeeded in negotiating a compromise – which can only remain fragile under current circumstances – concerning the integration of the main organisations within a French Council for the Muslim Religion. In the same way, in state schools, an attempt to supersede a strategy of mere neutralisation, translating into an ethnicisation of Muslim pupils,³⁸ has culminated in a management of differences.

The erection of mosques is characteristic of such naturalisation, as is highlighted by a comparison between the negotiations over the setting up of Muslim places of

organ, the May 18, 1981 decree provides for sacrificers to be approved on a piecemeal basis by the Préfet of the Département where they carry on their trade.

Among the numerous works evoking the issue of the representation of the Muslim religion in France, the following are highly recommended : A Boyer, *L'Islam de France* (1998) 370; S Bencheikh, *Marianne et le Prophète, l'Islam dans la France laïque* (1998) 282; F. Frégosi, 'Le culte musulman et la République, la régulation publique de l'islam dans un cadre laïque', in R Leveau, K Mohsen-Finan, C Wihtol de Wenden, *L'islam en France et en Allemagne : identités et citoyenneté* (2001); F Frégosi, 'Les problèmes d'organisation de la religion musulmane en France' (1998) January *Esprit* 109-136.

³⁶ R Leveau, K Mohsen-Finan, C Wihtol de Wenden, *ibid.*

³⁷ C de Galambert, in R Leveau, K Mohsen-Finan, C Wihtol de Wenden, *ibid.*

³⁸ V Geisser, 'La laïcité scolaire chez les élèves de "cultures musulmanes": l'espace des possibles', (Paper given in the IEP of Aix-en-Provence for the symposium: *Laïcité et pluralisme religieux*, June 2002).

worship in the Low Countries and in France, more specifically in Amsterdam and Marseille.³⁹ Down south, what is discussed is building '*The Mosque*' of Marseille, whereas up north in Amsterdam they just talk of 'establishing mosques'. In the first instance, that of the mosque of Marseille, *laïcité* as the image-frame of the negotiation involves highlighting the 'visibility-representativity' of one mosque, and one alone, specifically attached to the city of Marseille, and in no case implementing a strategy of multiple establishments, in accordance with the specific needs of the faithful. In the same way as the public authorities have sought to designate clergy and single representative organisations, they seek to identify central, representative places of worship. Thus, the buzzword is 'mosque-cathedral', which historically refers back to the diocesan conception of Roman Catholicism, antedating even the Jacobin administrative model. The State stands ready to fund mosques and associations, to authorise differentiated practises within the state school system, but only to the degree in which a centralised, unified Muslim cult has been established. *Laïcité*, the moving feast of a policy of controlled worship, has evolved latterly towards the qualification of Islam as a 'state-approved religion', or 'great religion', to the point where it may be said to have agreed to negotiate its own resources within certain narrowly defined ideological and institutional constraints.

The new Muslim players have interiorised such constraints, a fact which empowers them the more efficaciously to negotiate the normalisation of Islam. Muslim pupils have recourse to *laïcité* to demand the right to express their 'Islamity', whereas the resistance of the school authorities to such claims is also underpinned by reference to the latter.⁴⁰ Once again, what all this boils down to is the fact that *laïcité* can no longer be taken for granted as an elementary, intangible, self-evident given, but rather as a conceptual frame via which conflicting interests come into play.⁴¹ In other words, here again what we are seeing is no longer a conflict over the abolition or the maintenance of *laïcité*, but about its relative definitions. The resistances are those of an older cognitive field, restricted in its views to a 'neutralising-ethnicising' form of *laïcité*, while the claims of the Muslim pupils fit in with the lineaments of a still emerging, increasingly pluralistic cognitive field, entailing certain, already discernable consequences: the project of teaching the 'religious fact' in all its diversity at school, provision for dietary and behavioural specificities etc. This negotiation, however, still remains tributary to a fixed representation, both ideologically and organisationally centralised.

³⁹ M Maussen, lecture given in the framework of the annual Doctoral Conference in Political Science (2001) at the IEP (Institute for Policy studies) at Aix-en-Provence, France, concerning his ongoing post-doctoral research project on '*Les négociations pour l'implantation de Mosquées: l'exemple d'Amsterdam et de Marseille*' (Current Negotiations for the setting up of Mosques : the examples of Amsterdam and Marseille).

⁴⁰ V Geisser, above n 38.

⁴¹ One may find evidence of this in the very jurisprudential instability of the Council of State concerning the 'Islamic headscarf' issue, since the opinion handed down on November 27, 1989. A Boyer evokes a slippage on the part of the Council in the direction of 'laicism', through a toughening of its jurisprudence (see the contradictory opinions handed down on May 3, 1992 and on March 14, 1994).

V LAÏCITE AND SYMBOLIC VIOLENCE: THE CASE OF THE MUSLIM VEIL

The Commission convened by Bernard Stasi on French President Jacques Chirac's bidding, in order to 'ponder' on the 'issue' of the presence of the Islamic veil on state school premises, typically represents the case of an *ad hoc* institution erected in order to 'rationally' justify already pre-existing religious prejudices and legitimise *a priori* decision-making.

The 'sages' sitting on the Commission, taken individually, all held contrasting opinions concerning the issue of 'religious signs' at school. Then in the course of debating a consensus was progressively constructed against the wearing of the veil. One can plausibly link the construction of such a consensus to a phenomenon we have very frequently observed on the subject of Islam. That is, in a first phase, on expounding rational arguments concerning the multiplicity of Islam, the plurality of its schools of thought, the fact that fundamentalism is not of its essence, that historical and economic conditionalities have played a great role in its current religious radicalisation, one is gratified by words of chastened assent, going something like: 'Yes, yes, of course, how right you are!' But then immediately afterwards, the conversation goes into overdrive; this is no longer a case for rationality, but of speaking 'sincerely', among 'peers', culminating in a complete annulment of the aforesaid exclamation of consent, to be replaced by quite a different style of utterance, this time in the register of irrational connivance, which starts more like this: 'All the same...'. In other words, rationally, objectively you are right, but rationality has no purchase on such matters: 'This just won't do!' The author of this paper recalls many a conversation along similar lines, one of the most recent being with Henri Pena-Ruiz (a member of the Commission), to whom I finally retorted: 'But *what* just won't do? What do you mean?' On which the honourable member was to expostulate: 'But, you know, Islam, the culture and all that!' If you insist on demanding further explanation, you immediately become a *provocateur*, a radical, because you are forcing your counterpart to speak the unspeakable, to avow the unavowable, that 'you know!' secret which you must necessarily nurse in common with 'everybody', the 'common knowledge' which you of necessity share, because you are 'one of us' - unless you are either a 'traitor' to the Republic or a simpleton. This 'yes, but, all the same', following hot on the heels of 'yes, you are right of course', is, in this author's opinion, what should most solicit the scrutiny of the sociologist, because it reveals the subliminal, the unreflecting reflex, the kind of 'practical good sense' of the 'sage' who thus jettisons to a great extent the hard-won territory of his own reflexive intellectual positions, once placed in the position of 'decision-making' or believing he is taking measures against the Muslim veil.

According to Jean Baubérot, early in December, with the report being due in to the President of the Republic on Thursday 11 of that very month, and already largely written, it suddenly occurred to the Commission that no veiled young woman had testified. The Senate's official in-house television channel was to broadcast a

sequence during which a distraught and dismayed Bernard Stasi made a last minute attempt to get hold of a ‘veiled girl’ to provide her testimony, finally making do with Saïda Kada, co-author of a book called *L’une voilée, l’autre pas* (‘One veiled, the other not’).⁴² This was not to deter the Commission from declaring, as a ‘recapitulation of all the different positions expressed by the persons heard’, that the Islamic veil ‘for those who wear it, may take on a variety of meanings. It may be a personal choice or on the contrary it may be a constraint’.⁴³

And that is about all we will be told, no more than an elementary binary alternative. What is more, the information concerning the purported meaning that the young women bestow on their act did not originate from the girls themselves, since practically almost none had been heard by the Commission. The report then continues by stating that to those who do not wear one, it ‘is fundamentally in breach of the equality between men and women’.⁴⁴ To conclude, the Commission speaks out in the name of ‘the whole educative community’ for which ‘the visible quality of a religious sign is felt by many to be contrary to the mission of schools’ and that ‘it is also in breach of the values which the school system should be teaching, more particularly the equality between men and women’.⁴⁵ In other words, wearing the veil, even if by voluntary choice, remains a breach of male/female equality. Thus all the ‘variety of meanings’ can be reduced, in reality, to one, an infamous reduction of women to inferiority.

It cannot indeed be denied that such a meaning may exist. But is it the only feasible interpretation? The surveys we have conducted demonstrate that it is one that only applies in certain social contexts; not only is it not the only one applicable within the tradition,⁴⁶ but, what is more, nowadays, in social context, and particularly in the school system. Most of our testimonies from young Muslims bear out the general fact that, in the majority of cases in the French context, the wearing of the *hijab* is more often a voluntary choice on the part of young women than an imposition by their parents or brothers.

⁴² D Bouzar, S Kada, *L’une voilée, l’autre pas* (2003).

⁴³ Commission de réflexion sur l’application du principe de laïcité dans la République (‘Commission for Reflection on the implementation of the *laïcité* principle in the Republic’), ‘*Rapport au Président de la République*’, handed in on Thursday December 11, 2003. The initial version of the report in our possession has no page numbers, but all the following quotations originate from sub-paragraph 4.2.2.1. ‘L’École’ (‘School’), from paragraph 4.2.2. ‘Défendre les services publics’ (‘Defending public services’).

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Fine-tuning interpretations of the norm, of behaviour, has always been fraught with problems in different Muslim social contexts (Al-‘Alwâni Tâhâ Jâbir, *Islam, conflit d’opinion: pour une éthique du désaccord* (1995). In a recent study Hélène Legeay has highlighted the numerous models and techniques of interpretation including ultra-modern ‘opinions’ on doctrine (*Essai de définition de l’Ijtihad contemporain* (‘Attempt at defining Contemporary *Ijtihad*’), pre-doctoral dissertation for the African, Arab and Turkish Worlds, DEA, University of Aix-Marseille I, 2004).

...You know what, I'm laughing about it with my little sister, I tell her go on, make my bed, or I'll make you wear the veil. You see, just for a laugh, I couldn't care less. But there are people who say, yeah, but then there are people who are forced to have it on, but that's a load of bullshit, that's bullshit, we're in France, here we're in France.⁴⁷

Others may admit that parents sometimes, very rarely indeed, impose the wearing of the *hijab*, but girls who have the veil imposed on them, according to such sources, are precisely those who will take it off once they are at school:

But it's true there are some girls who are forced to by their parents. Well, you can see them a mile off, those girls. If they are forced to wear the veil by their parents, as soon as they are at school, they'll take it off by themselves, because they know that their parents won't see them at the *lycée* (high school) with their headscarf or whatever. But there are others who do it because they really want to, and it's a shame to punish those girls, by the reason that it's a real shame, punishing those girls who really want to.⁴⁸

Here, of course, our analysis was confined to the declarative level. Nevertheless, the existence of different ways of wearing the veil, in conformity with differing social realities, has been confirmed as a pattern by the findings of our interviews. Regular long-term immersion in immigrant social environments, for instance in the Cité des Aubiers in Bordeaux and in the Quartiers Nord in Marseille, has enabled to counter-check any possible discrepancy between the 'surface level' of language and concrete behaviour patterns. Such a discrepancy in the results of the survey indeed turned out to be quite high in the case of the use of closed questionnaires, but fairly low when semi-directive interviewing techniques, under conditions of complete anonymity and in isolation from family influence and peer pressure, were applied. A variety of patterns of occurrence in reasons for wearing the *hijab* thus clearly emerge, calling into question the usual stereotypes. These ranged from the outwardly imposed signification, the stereotype, to the description of voluntarily claimed ideal types.

VI THE 'FORCED VEIL' AS RED HERRING, THE 'VOLUNTARY VEIL' AS THE TRUE ISSUE

However, the forced wearing of the *hijab* has always been extant among certain sectors of immigrant and post-colonial population in France, a fact which raised no shock waves of protest before the 1980s. What has essentially changed between the 1960s and '70s and the period running from the late '80s up till today? It is the fact that the Islamic veil in the vast majority of cases today is flaunted as a voluntary choice, conspicuously and unbearably so, on the part of those who don it. What is more, it is henceforth worn outside the strictly private sphere of the home, to which

⁴⁷ Field survey carried out under author's supervision (Liogier, above n 1).
⁴⁸ *Ibid.*

its imposition was formerly confined. This state of affairs has led to declarations that the ‘veil’ has become a social problem, triggering a line of public policy culminating in an Act of Parliament (*2004 Act*) forbidding this article of clothing in school precincts,⁴⁹ at the very time when it is being exteriorised for the simple reason that it is voluntarily chosen, including by school-goers, whose intention definitely is to study as a means of social promotion, and who no doubt see therein an ‘identity signifier’, a way of setting oneself apart from certain others, from the ‘Céfrancs’ (Palindromic suburban slang for ‘Français’), who disqualify them from being ‘truly French’, but also in opposition with their own families, considered by them to be culturally over-assimilated, conniving in their own alienation, and ‘living in ignorance’ of ‘genuine’ Islam.

The great majority of veiled girls (who represent overall a tiny minority within their own group) are among the highest school achievers, who declare that they aim at gaining access to employment in upper bracket professions notwithstanding their wearing the veil, which they even mean to flaunt as a banner of success, a conspicuous sign of their resolve to come to terms with themselves both in their Arab-Muslim identity and ‘nonetheless’ as wholly French, without having to ‘get integrated’ in any particular way. Strangely enough, what indeed seems to disturb critics the most is the ‘voluntary veil’, voluntarily manifested in public, rather than the ‘imposed veil’, generally occurring in the private sphere of family life, even if it is only in the latter case that it is violently imposed, which is concretely a violation of women’s rights in the currently accepted sense of the term. The paradox is thus the following: it is the ‘voluntary veil’ which is coming under attack, which is at issue, but as it is unassailable *per se*, precisely because it is indeed voluntary, it will be criticised for being what it precisely is not, ‘veiling by constraint’, when the public authorities never formerly displayed the least concern about the latter. Thus it is the girls’ concrete choice which bears the brunt of the attack, paradoxically in the name of struggle against a somewhat abstract ‘constraint’, the truth of which nobody, at least among the ranks of the commissions in charge of advising the powers that be, has gone to the trouble of checking out.

When the veil was ‘in transit’, in the 1960s and ’70s, among ‘different’, meaning distant and distinct, Maghrebin populations, transient and remotely living their lives in their ‘neighbourhoods’, this gave rise to no fundamental issue. Since the veil has come out and spilled onto state school premises, even climbing the social ladder, to the point of being flaunted by a barrister, a doctor, or any other respectable member of the female population, then and only then does it figure as a serious ‘integration problem’. Incidentally, the crossing of school achievement indicators with those of the feeling of integration shows that the more young Muslims from poor neighbourhoods undertake studies in higher education, the less well integrated they

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Exact title of the Act : *Loi n°2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics.* (Law of 15th March 2004 applying the principle of secularism to regulate the wearing of signs or clothing manifesting a religious affiliation in public schools, lower secondary and secondary schools).

feel themselves to be. This is of course only an apparent paradox, since we have just observed that, in the problematic of integration, what is at issue is not cultural and educative exclusion, but indeed the access of Muslims *per se*, visible as such, to culture and education.

Of course, there is no denying that there is indeed a ‘forced veil’, or even a simultaneously ‘voluntary’ and fundamentalist one, while maintaining that this type of veil is a minority phenomenon, passed off as that of a majority, and even the sole imaginable kind. In order to impose such a stereotype, the mediator/decision-makers of the ‘*laïque*’ Republic have made no bones about transforming themselves into Ulemas, interpreters of the Koran empowered to state the true faith, to state for instance that the *hijab* is no obligation under Islam, as Hanifa Cherifi, Ombudsman ‘in charge of the veil’ for the French Ministry of Education recently declared. It thus becomes easy enough, along such lines, to understand why the Conseil Français du culte Musulman (French council of the Muslim Religion) has been deprived of the ‘right’ to criticise this Act: because it was ‘electioneered’ to confirm and broadcast the dominant viewpoint on what the ‘Islamic headscarf’ is all about.

We stick with the outlook that there is only one feasible interpretation for the wearing of the veil, as there can only be one possible meaning for deep Islam. Fundamental Islam is as a matter of course fundamentalist.⁵⁰ The dominant impose their classifications, their definitions, their images, while the dominated, alias the vast majority of French Muslims, struggle for the recognition of their own self-definition, of their own whiter shades of grey. This is echoed in the majority-sanctioned definition of *laïcité* by French Muslims as the positive liberty to express one’s own form of worship, and not the purely negative, and to them necessarily neutralising, neutrality of the French public authorities.

Re-treading that stance of ‘neutralising neutrality’, with its *a priori* imposition of a single meaning onto the activities, practises and religious symbols of Muslims, thus merely confirming ‘common sense’, i.e. the dominant culture whose main framework we have attempted to delineate in this paper, is what the Stasi Commission’s findings finally boil down to. Nobody would think of calling into question the fact that there are several ways of wearing a Christian cross, in other words that there are multiple motives that may prompt individuals to exhibit this sort of religious sign. Without aspiring to the exhaustiveness of rocket science, the ‘identikit’ of a certain number of typical cross-wearers could rapidly be established: cross-wearers through pure social conformism, devoid of the slightest involvement in religious practise, not only implying a lack of belief in God and in the existence of Jesus, but excluding the raising of any issue of the sort; cross-wearers who wish to highlight their fidelity to the Roman Catholic Church; cross-wearers with aesthetic motives; cross-wearers fired by religious fundamentalism; cross-wearers who seek to actively assert their autonomy facing the pressures of social, sexual and other taboos, seeing in Jesus the harbinger of untrammelled freedom.

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Survey on the image of Islam published in the French daily press, *ibid.*

A plethora of other traits could be found, all of course merely ideal types, i.e. focusing in a purely stereotypical way on such or such a motive justifying the choice of being a cross-wearer. In the arena of social reality, such ideal types are no more than tensions, or a crossing of intentions which determine the actor's wearing such a religious symbol: 'It's attractive and it recalls that I was once baptised, and also enables me to manifest my wish to respect Christian values', etc. Tracking and analysing such 'good reasons' in the actor's own eyes justifying his acting in such a manner rather than in any other, entails methodologically attempting to place oneself in his position, being comprehensive, following the expression coined by Max Weber to confer a name on his own scientific method, 'the comprehensive sociology of the actor'.⁵¹ This involves of course not only simply understanding from outside, but being 'subjectively understanding', which means to suspend all *a priori* thinking, to practise *époque*, to place between brackets one's own social position. The sociological exercise of 'Weberian understanding' consisting in the construction of a multiplicity of ideal types thanks to an acute focus on the variety of meanings which social actors themselves confer on their actions, is already *de facto* a means of bracketing our own social position. It is precisely just such a basic exercise of sociological hygiene that the members of the Stasi Commission stubbornly refused to apply. The mere fact of their hearing several veiled girls and of trying to see things from the latter's viewpoint, of attempting to be 'subjectively understanding', in order to reconstruct the meaning they confer on their act, would have sufficed to send cracks through the dominant consensus. But here again, those who had taken it on themselves to be the agents of the dominant culture had a vested interest in maintaining such a disregard for their object, a vested interest in omitting to question the aforesaid girls, a vested interest in not understanding, in not being 'understanding'. It was thus all the easier for them to maintain that the belief of the latter had only one possible meaning/interpretation. While simultaneously not a single one of them would doubt that the Christian cross is susceptible of a multitude of mutually competitive meanings/interpretations, simply because, globally speaking, the Christian cross is not 'shocking'. Of course, to make a show of balance, of face-value universality, the Christian cross was itself to be characterised in the framework of the 2004 Act as a symbol susceptible of being over-conspicuous under certain conditions, but all and sundry remain firmly convinced that the 'Christian cross cannot be imposed', and does not represent 'a sign of gender inequality', as the veil does.

Since the essential, if not only, justification of the 2004 Act, according to the members of the Stasi Commission, is not to put an end to the display of religious signs, but to prevent their imposition, it becomes virtually impossible to understand

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Cf Max Weber in Guenther Roth and Claus Wittich (eds), *Economy and Society, I. Definitions of Sociology and Social Action* (1978) 10-12 (M Weber, *Economie et Société. Tome 1: Les catégories de la sociologie* (1995) 27-52).

on such a basis why the wearing of the cross and other less ‘problematic’ signs should also be forbidden. This is because the abstraction of a universal standpoint (which is one of the basic principles of the French Republic) requires denying any singular stand in an Act of Parliament. But it is precisely, paradoxically, the fact that the real particular aim of the *2004 Act* is hidden behind the rhetoric of universality that makes it more efficacious for its concrete targeting, i.e. the paramount objective of specifically eradicating the Muslim headscarf (when the Act forbids theoretically the religious signs in general). Here it becomes blindingly clear that certain other objectively religious signs and symbols are not even counted as such. It will not be seen as shocking for a young secondary school-goer to be seen wearing a tee-shirt sporting a huge *tai-ji*, the Taoist ideogram representing the *ying-yang*. Nevertheless, the *tai-ji* is first and foremost a particularly conspicuous religious symbol, and even one of the most widespread in the world, to be found not only in Taoism, but also in Buddhism, in Hinduism and still elsewhere. Thus it is not the fact of being a highly conspicuous religious sign that fundamentally counts, but the fact of displaying a reference in breach of the implicit criteria defining the legitimate perception of what is ‘religiously embarrassing’. Indeed, the *tai-ji* is a ‘post-materialist’ signifier, referring back to the culture of global harmony, of personal development, core values of wellbeing, and those of the top achievers on today’s global social playing field.

We do not even notice the huge *tai-ji* on the young man’s tee shirt. We do not even notice it because it is not ‘problematic’, so it does not even arrest our attention. It is a self-evident, all right image. The image of a woman wearing a headscarf, on the contrary, is not self-evident, not okay. It is important to understand here that what we mean by the word image is not merely a projection, an inconsequential fantasy, but the social construction of the lineaments, the colours, of what makes up reality for each and every one of us. We think we see things passively, when the very way in which we distinguish them cognitively (excluding, including, hierarchically arranging, emphasising certain parts of reality in our perception to the detriment of others) is correlated with the way in which we distinguish them socially (excluding, including, hierarchically arranging, emphasising the importance of certain parts of the population, of certain activities). The cognitive field is indistinguishable from the social field. It is on the level of the percept itself, of the structure of the cognitive field, that the declassing of Islam and the consequent ban on the headscarf is played out. Building a typology of the different ways of wearing the cross is tolerable. The multitudinous manners of donning the veil lie beyond the pale of the socio-cognitive field, and so below the threshold of perception. ‘Common sense’ does not seek to contradict or to criticize the multitudinous manners of wearing the veil, it simply does not see them, they are a blind spot in its field of perception, so, *a priori*, the latter cannot be endowed with existence.

VII CONCLUSION: *LAÏCITE* MEANS ASSIMILATION, NOT INCLUSION OF MINORITIES

In order to strip down the concrete mechanism of the French *laïcité* machine, we have chosen as an exemplar the case of the treatment of Islam: a policy of massive intervention, definition by the State itself of what is and what is not the good (right) Islam (whose representative organ is henceforth the CFCM, closely monitored by the Republic), what are the good (right) religious practises and what the bad. The public authorities, from the high ground of *laïcité*, usurp the place of the Imam in defining what is orthodox and what is not, penetrating within the very corpus of Muslim doctrine.

The case of the ‘head-to-foot veil’, improperly called ‘*burqa*’, breaking news in France as from June 2009, and the object of large-scale public debate, more particularly after President Nicholas Sarkozy⁵² had entered the fray, has entailed the setting up of a ‘Commission of information’ at the National Assembly,⁵³ one of whose functions is to pronounce, not on whether this piece of apparel objectively jeopardises the public peace, but to demonstrate ‘that there is no genuine Islamic obligation at stake’, thus flying in the face of any meaning the girls who were wearing it might choose to bestow on their decision to do so. The President of the UMP (conservative majority currently in office) parliamentary group, Jean-François Copé, did not recoil from proposing, deadpan and as a white knight of *laïcité*, not only the voting of a new Act of Parliament forbidding the ‘head-to-foot veil’ in all public spaces,⁵⁴ but a prior six-month-long campaign, during which a certain number of ‘*femmes relais*’ (‘female go-betweens’) hand-picked by the authorities would sally forth to preach the republican gospel in those ‘sensitive’ zones where women are known to don the *burqa*. The avowed objective is their ‘re-education’, to use Minister Cope’s own words, entailing a ‘phase of six months to a year of dialogue, explanation and monition’.⁵⁵ The President of the UMP parliamentary group at the National Assembly was nothing loath, on his side, to hand down a ‘*fatwa*’, a juridical and doctrinal decision, asserting *ex cathedra* that ‘that the wearing of the Burqa is not a Koranic prescription’.⁵⁶ In reality, what was at stake was to affect the disappearance from public space of anything different, exogenous, self-evidently aesthetically intolerable. This is not about socially including, veil-clad women, but about frogmarching them to assimilation, culturally integrating them, i.e. to make them completely ‘disappear’ down to the last details of their personal aesthetic choices.

⁵² Declaration on June 22 during the opening ceremony of the Congress of Versailles: ‘the *burqa* is unwelcome in France ...’.

⁵³ Commission set up on July 1, 2009, composed of 32 deputies (members of parliament) on the initiative of a Communist MP.

⁵⁴ Not only in schools but everywhere in public spaces (except at home and in private circles).

⁵⁵ See <http://www.lepost.fr/article/2009/07/08/1611767_cope-il-ne-faut-pas-se-tromper-la-burqa-est-un-debat-politique-pas-religieux.html>.

⁵⁶ See <<http://www.slate.fr/story/7621/burqa-cop%C3%A9>>.

Even though we have mainly focused here on the issue of Islam, it would have been just as enlightening to have taken the example of France's cults.⁵⁷ The public debate surrounding the recent trial of the Church of Scientology derives from the same logical matrix of selecting acceptable forms of worship and neutralising those deemed not to be so,⁵⁸ even though our Republicanist culture of *laïcité* has recently been undergoing some heavy competition from a more pragmatic ethos at the highest echelons of the State.⁵⁹

⁵⁷ Liogier, above n 1.

⁵⁸ See <http://www.humanite.fr/popup_imprimer.html?id_article=2746165>.

⁵⁹ Raphaël Liogier, 'Révolution culturelle dans la lutte anti-secte', *Le Monde* (Paris) 4 March 2008.